* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Delivered on May 25, 2007

\+ CRL.REV.P. 164/2007

MOHD. ADNAN AFTAB ..... Petitioner
Through Mr. I.Q. Alvi with Mr. Sheikh Issar Ahmed, Advocates

versus

THE STATE, NCT OF DELHI ..... Respondent
Through Mr. Pawan Sharma, APP for State

CORAM:
Mr. Justice S. Ravindra Bhat

1. Whether reporters of local papers may be allowed to see the judgment.? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

<u>Mr. Justice S. Ravindra Bhat</u> (Open Court)

1. This revision is directed against an order of the Additional Sessions Judge dated 12.02.07 by which he confirmed the order of the Juvenile Justice Board, declining bail. The petitioner along with co-accused was charged with committing offences under Sections 302/377/34 IPC. The incident in this case occurred on 21/22.07.2006.

2. The relevant part of the order of the Juvenile Justice Board reads as follows:

"SIR of delinquent received which is based on personal interview and SIR from local DPO is awaited. SIR of delinquent shows that his father is a Government servant in UP while his mother is a house wife. He has two elder sisters both of whom are married while his younger brother is studying. Juvenile is having companion influence and the probation officer has observed that Juvenile is known his co-accused Shehzad since last some years and both belonged to Nagina. They both were residing in same locality and had intimacy. They habitually wandered in nearby jungles and that delinquency arose as a consequence of the intimacy. The delinquent in the present case committed murder of one person along with his co-accused which consequent of unnatural sexual behaviour. The delinquent was residing at Delhi to pursue his studies without any supervision and control of any of his family members, who were residing at Bijnore (UP). The reason for which the offence was committed has also the manner in which it was committed with the adult accused (co) make us believe that release of delinquent at this stage would defeat the ends of justice and would also be against the moral physical and psychological well being of the juvenile who appears to be in need of counselling for behavioural modification.

Hence, application for bail filed on behalf of the delinquent is rejected."

3. The applicant was detained on 29.07.2006. He has been in custody ever since then. By order dated 20th March, 2007, the trial Court records were requisitioned. They reveal that a Social Investigation Report (SIR) dated 22.11.2006 was on the record. The report states that the petitioner is intelligent and quite active, he had cleared the UP Board examination, at the Standard XII level and paid sufficient interest in studies. He was admitted to the Draftsman course from the Apex Care Centre, New Delhi. The report noted that the petitioner's father maintains discipline at house, and that he is emotionally attached to family members. The family has good social and economic condition; his father is an Engineer in the U.P. Jal Nigam. The report was of the opinion that the petitioner developed intimacy with the co-accused, who lived in the same

locality. It recommended that he is young and has sufficient interest in studies; his parents and relatives are anxious about his future.

4. The learned counsel for the State in this present case, opposed the grant of bail on the ground that the alleged act said to have been committed by the juvenile along with the co-accused was one of great moral degradation and itself would demonstrate the perversity of the mind of the juvenile.

5. The definition of a 'delinquent juvenile' means a juvenile who has been found to have committed an offence. Section 12 of the Act deals with right of bail to the juvenile. Sub-Section (1) provides that, when any person accused of a bailable or non-bailable offence, and apparently juvenile, is arrested or detained and is brought before a Board, he shall, notwithstanding anything contained in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, be released on bail with or without surety but he shall not be so released if there appear reasonable grounds for believing that such release is likely to bring him into association with any known criminal or expose him to moral, physical or psychological danger or that his release would defeat the ends of justice. Sub-section (3) provides that when such person is not released on bail under sub-section (1) by the Board it shall, instead of committing him to prison, make an order sending him to an observation home or a place of safety for such period during the pendency of the inquiry regarding him as may be specified in the order.

6. Section 12 mandatorily provided that a juvenile, even “apparently a juvenile” should be released on bail. All Courts dealing with such situations must

give full meaning to its provisions, as also the object of the Act. Bail has to be granted to a juvenile, notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any other law for the time being in force. The exception, i.e. likelihood of moral or psychological danger to the juvenile or his coming to contact with a known criminal should be *prima facie* made out. (Refer *Prakash -v- State of Rajasthan 2006 (112) Crl. LJ 1373; Vijendra Kumar Mali -v- State 2003 (109) Crl. LJ 4612; Vicky Vikram Singh v- State 2003 (112) Crl. LJ 1892).*

7. The Board, in its discussion of the merits of the bail application, in my opinion, considered irrelevant factors. The intimacy developed by the Petitioner, with co-accused, unsupervised stay and education in Delhi, are not permissible exceptions, under Section 12 which authorise refusal of bail. The materials on reward should strongly indicate:

(1) possibility of contact with known criminal.

(2) exposure to moral or psychological danger of the delinquent.

(3) his release would defeat ends of justice.

These factors, and none else can permit a Board or Court to refuse bail. Unfortunately, the Board, after discussing the intimacy of the petitioner with co-accused and his becoming wayward, concluded that his would defeat the ends of justice.

8. This court has repeated, time and again that the mandate of section 12 cannot be thwarted. This would imply that the board and the court should address themselves strictly to the rule, and carefully scrutinize the case to be satisfied if the

materials point to any of the exceptions. If they do not, bail cannot be refused. This Court has emphasized that discussion on merits of the application, as in the case of an application under Section 439, Cr.P.C. on considerations of "ends of justice" in that context are unwarranted. (See *Manoj Vs. State* 2006 (3) JCC 1478; *Arvind vs. State* 1999(2) JCC (Del) 311, *Master Abhishek Vs. State* 2005 (6) AD (Del) 18). The expression "ends of justice" is not an abstract incantation, but rooted in the context of the Act. The welfare of the juvenile is the focus of enquiry and scrutiny. Mere recourse to such terms without showing how ends of justice would be defeated, is a negation of the Act, and would render Section 12 meaningless.

9. For the above reasons, the revision has to be allowed. Accordingly, the petitioner is directed to be enlarged on bail on his father furnishing a personal bond in the sum of Rs. 25,000/- and two sureties of the same amount to the satisfaction of the Board. The father shall also report to the Board once a month about the activities of the petitioner.

The petition is allowed on the above terms.

Order dasti.

S.RAVINDRA BHAT, J

MAY 25, 2007